

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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Petition of the Public Utility Commission of Texas)
for Expedited Decision For Delegation of Authority)
to Implement Number Conservation Measures)

CC Docket No. 96-98
File No. NSD-L-99-55

**COMMENTS OF
LEVEL 3 COMMUNICATIONS, INC.**

Level 3 Communications, Inc. ("Level 3"), by undersigned counsel and pursuant to the Common Carrier Bureau's July 14, 1999 Public Notice,¹ hereby submits its Comments in the above-captioned proceeding.

I. INTRODUCTION

Level 3 is a communications and information services company that is building an advanced Internet Protocol technology-based network across the United States, connecting 25 cities. Level 3 will deploy its network in phases by 2001. The company also plans to build local networks in cities across the country and to interconnect those networks with its national long distance network. As a facilities-based provider of local services, Level 3 is dependent upon adequate access to numbering resources to serve customers and expand the geographic scope of its operations.

Level 3 welcomes the initiative on the part of the Public Utility Commission of Texas ("PUCT") in attempting to address the problems associated with NXX code shortages. Indeed, Level 3's inability to obtain NXX codes and telephone numbers is one of the most significant, artificial barriers to competitive entry and expansion. Level 3 agrees that several of the measures

¹ *Common Carrier Bureau Seeks Comment on the Texas Public Utility Commission Petition for Delegation of Additional Authority to Implement Number Conservation Measures*, NSD File No. L-99-5, DA 99-1380, Public Notice (rel. July 14, 1999). The Texas Public Utility Commission's Petition is hereinafter referred to as "PUCT Petition."

proposed by the PUCT could in fact remedy the number allocation problems currently facing several Numbering Plan Areas (“NPAs”).

There are several other respects, however, in which Level 3 believes that the PUCT’s approach to the NXX code shortages is inappropriate. Rather than looking to novel measures as a panacea for code exhaust, the PUCT should use more tested and reliable means of increasing access to telephone numbers. There is no guarantee that these alternative conservation measures – such as number pooling or unassigned number porting – will work, and it would be inefficient and burdensome for carriers to comply with what may become up to 50 separate number consolidation mechanisms. Level 3 believes that only after effective uniform federal solutions to these alternative conservation measures have been developed and tested should the states be encouraged to implement them. Indeed, the Commission is in the midst of a comment phase regarding the development of a national numbering administration framework.² The Commission should not presuppose or undermine the development of this national framework by giving the states piecemeal authority to develop independent numbering policies.

II. THE PETITION PROPOSES A NUMBER OF MEASURES THAT THE PUCT COULD EFFECTIVELY UTILIZE TO ADDRESS NXX CODE EXHAUST.

Level 3 supports the following number conservation measures for which the PUCT seeks delegated implementation authority from the Commission.

² See *In the Matter of Numbering Resource Optimization Connecticut Department of Public Utility Control Petition for Rulemaking to Amend the Commission’s Rule Prohibiting Technology-Specific Area Code Overlays*, CC Docket 99-200, RM No. 9258, Notice of Proposed Rulemaking (rel. June 2, 1999) (“*Numbering NPRM*”).

A. NXX Code Reclamation

Allowing the PUCT to reclaim unused NXX codes from carriers could provide a reasonable means of making more efficient use of numbering resources.³ While Level 3 believes that this is a technically feasible solution, some questions remain relating to the scope and timing of such reclamation. First, it is not at all clear how the PUCT would implement a reclamation process. In fact, the PUCT's request devotes only a single line to its request for such expanded authority. If the PUCT is to be given expanded authority, it certainly should first be made to explain in greater detail the kind of authority sought, or what it plans to do with that authority. In other words, this Commission should not "write a blank check" for the PUCT to use in reclaiming NXX codes.

Notwithstanding the lack of detail in the PUCT Petition, it might be possible to construct a limited delegation of authority to the PUCT for the purposes of reclaiming unused NXX codes from carriers. For example, it is essential that carriers not be forced to return NXX codes prematurely if their business plans call for the use of those codes in the foreseeable future. Many competitive local exchange carriers ("CLECs") place orders for NXX codes months in advance of entering a rate center in order to ensure that the numbering resources will be readily available once customer sales begin. CLECs may also decide to assign telephone numbers to a customer months in advance of serving that customer as part of their marketing efforts and business plans.

The Commission should help ensure the competitive neutrality of any rules the PUCT may adopt. If the PUCT is given authority to reclaim unused NXX codes, appropriate safeguards must be in place so that the state or numbering administrator is not given an inordinate amount of power over carriers' business plans. Among other things, the Commission may want to direct that the PUCT may only take action to reclaim an unused NXX code if the carrier has held the code for more than one year.⁴ The Commission should make clear that any

³ PUCT Petition at 10.

⁴ Level 3 recognizes that current industry numbering guidelines direct carriers to return NXX codes to the numbering administrator if a code is no longer needed or is not activated

delegation of authority to the PUCT with respect to reclamation of NXX codes only applies to those codes that are truly unused, and not to any codes that are simply determined by the state regulator to be somehow “unneeded” on a subjective basis.

B. Number Utilization and Forecast Informational Reports

Level 3 could support the PUCT’s request for authority to require all NXX codeholders to report utilization and forecast information, depending upon the scope of this authority.⁵ If this will simply be an information tool, if appropriate nondisclosure protections are in place, and if the forecasts are not treated as binding, it may very well be useful for the PUCT to have access to such information in identifying and planning for area code exhaust. However, if this information would be made available to the public, or if it were used to prevent carriers from obtaining subsequent NXX codes (either because the forecasts are binding or because the PUCT plans to establish a utilization threshold for future NXX codes), then Level 3 strongly opposes allowing the PUCT to collect such information.

For example, in its Petition to this Commission for expanded number administration authority, the New York Public Service Commission (through the Department of Public Service) proposed that it be given the power to limit a carrier’s ability to request new NXX codes if that carrier already holds other NXX codes with low utilization rates.⁶ The delegation of such numbering authority would generally be harmful because using utilization and forecast surveys to limit access to subsequent NXX codes would artificially limit the geographic scope of

within six months. However, in some cases customer requirements may cause a carrier to delay activation until several more months have passed. In light of the uncertainty of customer demand at times and the voluntary nature of the NXX code return policy set forth in the numbering guidelines, the PUCT should not be allowed to take any enforcement action to reclaim an inactive code until at least one year has passed.

⁵ PUCT Petition at 10. Again, this is an instance in which the PUCT has devoted only a single line to describing its request for delegated authority.

⁶ *Common Carrier Bureau Seeks Comment on New York Department of Public Service Petition for Additional Authority to Implement Number Conservation Measures*, NSD File No. L-99-21, Petition of the New York Department of Public Service, at 12.

carriers' operations. If a carrier is denied the ability to obtain a NXX code to serve a second rate center simply because it was unable to attract enough customers in its first rate center, this creates an unjustified, and possibly unlawful, artificial barrier to entry. Such measures would invite unwarranted regulatory interference with carrier business plans. Level 3 therefore urges the Commission to make sure that if the PUCT is given the authority to conduct utilization and forecast surveys, it is made clear that the PUCT may not use this information to deny a carrier NXX codes in the future, nor keep the information in any file available for public examination.

III. STATES SHOULD NOT BE PERMITTED TO UTILIZE UNTESTED METHODS OF NUMBER CONSERVATION THAT ARE SUBJECT TO FURTHER DISCUSSION, DEVELOPMENT, AND STANDARDIZATION.

Although Level 3 supports several aspects of the PUCT's Petition as discussed above, Level 3 believes the Petition should be denied in part because it is too vague in nature and would undermine national efforts to develop uniform number administration procedures.

A. Thousands Block Number Pooling

The PUCT proposes to implement a thousands block pooling regime.⁷ While Level 3 agrees that thousands block number pooling may prove useful in the future in making more efficient use of telephone numbers, there are many technical, procedural, and competitive hurdles that must be resolved before pooling can be considered a viable number optimization solution. For example, the NANC Report sets forth an "Implementation Timeline" which indicates that there are several pooling administration steps, system modifications, and cost recovery decisions that are not yet finalized.⁸ The NANC Report indicates that it will take between 10 and 19 months to implement pooling following a regulatory order.⁹ Moreover, the conclusions set forth in the NANC Report – such as the establishment of a 10% block

⁷ PUCT Petition at 10.

⁸ Number Resource Optimization Working Group, *Modified Report to the North American Numbering Council on Number Optimization Methods* (Oct. 20, 1998) ("NANC Report") at §5.3.

⁹ *Numbering NPRM*, at ¶ 159 (citing NANC Report at §5.3.3).

contamination threshold or the block assignment guidelines – are being considered in an open proceeding in which the Commission is just now receiving and reviewing comments.¹⁰

Even the PUCT's Petition makes clear that the Texas local telecommunications industry has serious reservations about the implementation of pooling "unless and until national pooling standards are approved by the FCC."¹¹ The Commission should not overlook these concerns – nor allow the PUCT to override them – in allowing the implementation of a mandatory pooling regime in Texas. While the PUCT urges a delegation of pooling authority now precisely because pooling standards are not yet developed and "may take years to establish at the national level,"¹² if anything, this lack of development should cut *against* awarding authority to the PUCT rather than weighing in favor of a delegation of pooling authority. The Commission should not allow pooling to be implemented where acceptable, appropriate pooling standards are still in such an experimental and developmental stage. Nor should it prejudice the outcome of its own numbering administration rulemaking by awarding pooling authority to the PUCT in the interim.

The competitive implications of mandatory pooling on carriers that are not yet required to implement Local Number Portability merit careful consideration and resolution before states are given the authority to compel participation in a pooling program. The PUCT has not addressed how it will minimize the potential damage to competition that may result from these proposals.¹³ For example, simply forcing carriers with only one or two NXX codes to pool those codes will have a significant impact on the cost structure of local exchange services. This will upset established business plans and may force carriers to withdraw from some markets altogether. The Commission should therefore ensure that operationally sound and competitively neutral

¹⁰ *Numbering NPRM*, at ¶¶ 187-192.

¹¹ PUCT Petition at 6.

¹² *Id.* at 7.

¹³ In fact, the PUCT has devoted hardly any discussion at all to details associated with its pooling plans. As in the case of the other delegation requests, the request for pooling authority constitutes a single line on page 10 of the Petition.

pooling guidelines are finalized before the states are given authority to compel participation in pooling mechanisms.¹⁴ Similarly, there must be some equitable method of recovering the costs associated with pooling participation. Furthermore, to be competitively neutral, rules should permit carriers to retain a minimum number of NXX codes that they do not have to pool. However, above all else, any mandatory pooling mechanism must first be demonstrated to be technically feasible and operationally sound, so that carriers are able to obtain and retain numbers without fear that the numbers they contribute to a pooling mechanism are effectively lost forever.

The prospect of 50 state governments erecting different pooling mechanisms presents a substantial technical and administrative burden for carriers. Given the vast disparity in resources among carriers, these burdens could prove to have a significant impact on the ability of smaller carriers to compete on a national basis. Level 3 therefore respectfully requests that the Commission decline to award the PUCT (or any other state commission) the authority to implement a mandatory pooling mechanism until: (i) comprehensive, procompetitive, uniform federal pooling guidelines have been finalized and implemented; (ii) pooling has been demonstrated to work in terms of providing carriers with access to thousands number blocks as needed; and (iii) carriers are ensured that they will be able to recover the costs associated with implementing a pooling mechanism.

B. Unassigned Number Porting

As is the case throughout its Petition, in seeking the authority to implement unassigned number porting (“UNP”), the PUCT has failed to provide any detail regarding the scope of its request.¹⁵ Level 3 fails to see how the Commission can provide the PUCT with the ability to

¹⁴ Level 3 recognizes that pooling guidelines were issued by the Industry Numbering Committee in January 1999. These guidelines do not, however, resolve conclusively the matters still open for consideration before this Commission in the context of the NANC Report and the *Numbering NPRM*.

¹⁵ PUCT Petition at 10.

implement UNP when there is simply no indication of how the PUCT would employ that authority, or what safeguards would be in place to ensure that UNP is implemented in a competitively neutral and technically reliable manner.

Even if the PUCT's request for delegated authority is worthy of consideration by this Commission despite these deficiencies, unassigned number porting – like thousands block number pooling – is still in a developmental process and the subject of consideration in the Bureau's review of the NANC Report. For the same technical, operational, economic, and competitive reasons that warrant resolution of thousands block number pooling at the federal level, Level 3 urges the Commission to deny the PUCT request to implement UNP on an interim basis. The NANC Report again makes clear that the implementation of UNP at this point should be exclusively a federal question: "The provisioning methodologies, administrative procedures and interfaces used to support UNP shall be uniform nationwide."¹⁶ Granting the requested relief to the PUCT would violate this uniformity principle, and prejudice the careful consideration of UNP currently under way in the context of the Commission's numbering administration rulemaking proceeding.

C. Sequential Numbering Enforcement Authority

The PUCT is also seeking the authority to require that NXX code holders assign telephone numbers consecutively.¹⁷ Requiring all code holders to assign their numbers consecutively will reduce the availability of numbering services which consumers have come to rely upon. This is contrary to the purpose of promoting new and inexpensive services.¹⁸ Level 3 therefore urges the Commission to deny the PUCT the authority to mandate this requirement.

¹⁶ NANC Report at § 6.2.5.

¹⁷ See PUCT Petition at 10. Despite the fact that the Commission has not yet had an opportunity to consider its request for authority, the PUCT previously ordered sequential numbering in 1997. *Id.* at 5.

¹⁸ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, Preamble (1996) (Preamble) (purpose of the act is to promote competition, secure lower prices and higher quality services and encourage rapid deployment of telecommunications services).

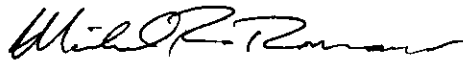
One of the most important options that new carriers can offer their customers is the ability to select telephone numbers. There are obvious business advantages to having vanity numbers that relate to a given customer's trade. Many customers consider this option a necessity and will only add services if they are able to obtain a desirable number. In addition, customers with multiple lines often demand that their telephone numbers be assigned in blocks that make logical sense. For example, if a customer needs fifty lines, they will request the numbers between NXX-XX00 and XX50. But if carriers are required to assign numbers consecutively and the next number up is NXX-XX19, they will not be able to offer their customers the simplicity they require. Thus, if carriers are forced to assign numbers consecutively, they will not be able to provide customers the flexibility to choose numbers that meet their business needs.

For these reasons, the Commission should not grant the PUCT the authority to compel consecutive number assignment. This rule would have serious adverse impacts on the availability of numbering options that consumers have grown to expect. This result is contrary to the purpose of the Telecommunications Act of 1996, harmful to consumers, and not in the public interest. Furthermore, as discussed elsewhere in these comments, there are other, competitively neutral means of promoting number conservation. Therefore, Level 3 urges the Commission to reject this request.

IV. CONCLUSION

Level 3 commends the PUCT for taking a proactive approach to resolving the problems of NXX code exhaust. Several of the proposals set forth by the PUCT may ultimately assist in making much more efficient use of existing number resources. However, the problem with some of these proposals comes in their vague nature, their timing, and their method of implementation. Even if one looks beyond the PUCT's failure to explain adequately the scope of authority sought from the Commission, certain of the PUCT's proposed measures are simply not ready for deployment in the market and the testing and implementation of these measures needs to be part of a coordinated national effort in order to best promote their competitive neutrality. In this instance, allowing the states to experiment with number pooling and related measures would only lead to inconsistency as each state, in isolation, attempts to resolve the technical, administrative, and competitive concerns. The Commission should therefore grant the PUCT a limited delegation of authority consistent with the recommendations set forth herein, but it should otherwise proceed within the context of its own number optimization docket to establish national guidelines.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Michael R. Romano, hereby certify that I have on this 16th day of August, 1999, served copies of the foregoing Comments of Level 3 Communications, Inc. on the following via hand delivery* as indicated and by first-class, postage prepaid U.S. Mail.

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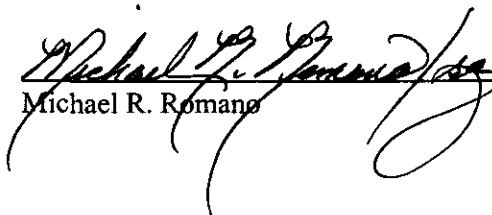
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